Office Supreme Court, U. S.
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Supreme Court Of The United States

October Term 1922

No. 464

GEORGIA RAILWAY AND POWER COMPANY et al.,
Plaintiffs in Error and Petitioners in Certiorari,

vs.

THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK, Defendants in Error and Respondents in Certiorari.

FROM THE SUPREME COURT OF THE STATE OF GEORGIA.

Reply Brief of Plaintiffs in Error and Petitioners in Certiorari.

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Attorneys for Plaintiffs in Error and Petitioners in Certiorari.

Johnson-Dallis Co., Printers, Atlanta, Ga.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1922.

GEORGIA RAILWAY & POWER COMPANY, ET AL.,
Plaintiffs in Error and Petitioners in Certiorari,
vs.
MAYOR AND COUNCIL OF TOWN OF COLLEGE PARK,
Defendants in Error and Respondents in Certiorari.

No. 464.

REPLY BRIEF OF PLAINTIFFS IN ERROR AND PETITIONERS IN CERTIORARI.

I.

The contention of defendant in error in its brief that the decision of the Supreme Court of Georgia, affirming the granting of an interlocutory injunction was a final adjudication, from which the writ of error should have been sued out and the contention that certain amendments to the answer thereafter made was not passed upon by the trial court are without merit both in law and in fact.

The contention that the affirmance of the interlocutory injunction was a final adjudication from which the writ of error should have been sued out cannot be taken as a motion to dismiss the bill of exceptions as there was no com-

pliance with the provision of the sixth (6) rule of this Court.

The contention itself is without merit under the Georgia practice with reference to such matters.

The judgment of the trial court granting or refusing the temporary injunction, and the affirmance of such judgment by the Supreme Court of Georgia is not a final judgment or decree in the case.

> Atlanta Trust & Banking Co. vs. Nelms, 119 Ga. 630 (1).

The only effect of such judgment is that points of law decided by the court are followed by the State Court, in the subsequent trial of the case.

> Atlanta Trust & Banking Company vs. Nelms, 119 Ga. 630 (1).

The court cannot grant a permanent injunction on an interlocutory hearing.

> Purcell vs. Pilgrim, 152 Ga. 61.
> Brown vs. Smith, 150 Ga. 112.
> Glascock County vs. Sturgis, 150 Ga. 634.

The affirmance of the interlocutory injunction by the appellate court leaves the case still standing for trial in the court below.

The demurrers in the case cannot be passed upon at an interlocutory hearing.

> Milltown Manufacturing Company vs. Bray & Co., 149 Ga. 151 (2).
>
> Mack vs. Westbrook, 148 Ga. 691.
> Bank of Soperton vs. Empire T. Co., 142 Ga. 34, 35 (2).

A final judgment or decree is not rendered until the verdict and a final decree is entered thereon.

Georgia Code 5421.

Georgia Code 5500.

Southern Cotton Oil Co. vs. Overby, 136 Ga. 69 (3).

Until the final decree the case is pending in the lower court; and, at any stage of the case, either party, plaintiff or defendant, in law or in equity, has the right to amend its pleadings either in matter of form or in substance.

Georgia Code 5681.

The right to amend is as broad in equity as at law.

Georgia Code 5408.

A defendant can set up either in his answer or by amendment thereto any matter which under the English practice should be the subject of a cross bill, technical cross bill not being required under Georgia practice.

Georgia Code 5547.

An answer may contain as many several matters as the defendant may think necessary for his defense.

Code, Section 5635.

Parts of the answer may be inconsistent with another part; and the defendant can avail himself of any and every part of the answer as a defense, conflicting parts not ousting each other.

Georgia Code 5630.

Georgia Code 5649.

The common law rule disallowing conflicting pleas or answers has been abolished by statutory law in Georgia.

Albany Phosphate Co. vs. Hugger Bros., 4 Ga. App. 771 (1).

An answer may be amended at any stage of the proceedings.

Haggerstown Steam Engine Co. vs. Guzzard, 86 Ga. 574 (2).

A sworn answer is subject to amendment at any time by leave of the Court.

Georgia Code 5639.

As a matter of right, a defendant can set up new facts or a new defense at any stage of the cause, by amending his answer, if an affidavit is attached to such amendment stating that said new defenses had not been omitted for the purpose of delay.

Georgia Code 5640.

Wynn, et al. vs. Wynn, et al., 109 Ga. 255.

Case Thrashing Machine Co. vs. Donaldson, 12 Ga. App. 121 (2).

The court can allow the amendment without requiring an affidavit.

Robertson vs. Weaver, 145 Ga. 626 (2).

When an amendment is allowed it becomes a part of the record and pleadings in the case; to be passed on by the trial court.

After the granting of the interlocutory injunction and its affirmance by the Supreme Court of Georgia, the plain-

tiff in error, filed an amendment to its answer (Record, pages 195-201). To this amendment was attached the affidavit provided for in Georgia Code Section 5640. The amendment was **also** allowed and ordered filed by the **trial court.** (Record, page 201.) This amendment brought into the case the constitutional questions, there set out; for the consideration and determination of the trial court. Defendant in error (plaintiff in the court below) demurred generally to the answer and **this amendment**. The order of the trial court shows that the court not only passed upon the original answer but upon **this amendment**, sustaining the general demurrer to the answer **as amended.** (Record, page 204.) There is therefore no merit in the contention that the constitutional questions raised by this amendment were not passed upon by the trial court. Subsequent thereto the case came on for trial before a jury; evidence was introduced and then a verdict was directed by the Court. (Record, page 204.) A final decree was thereafter entered on the verdict. (Record, page 204.) There had been no final determination of the case in the Court below until the rendition of the verdict and the decree entered thereon.

Walden vs. Walden, 124 Ga. 145 (1).

It was necessary to take this final judgment or decree to the Supreme Court of the State of Georgia before there was a final judgment or decree in the highest state court which could be brought to this Court for review.

Writs of error will only lie from this Court to review "a **final** judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had."

Federal Judicial Code, Section 237.

Missouri & K. I. R. Co. vs. Olathe, 222 U. S. 185.

As to what is a final judgment or decree,

Hazelton vs. Central Bank, 183 U. S. 130.
Chesapeake R. Co. vs. McCabe, 213 U. S. 207.
Schlosser vs. Hemphill, 198 U. S. 173.
Clark vs. Kansas City, 172 U. S. 334.

This question is decided by a recent decision of this court.
Southern Ry. Co. vs. Clift, Decision (No. 107) rendered December 4, 1922.

MANDAMUS CASE IS NOT RES ADJUDICATA.

The parties in the case at bar and in the mandamus case are not the same. The contentions made and raised in the two cases are different. That the mandamus case is not res adjudicata of the case at bar, was decided by the Supreme Court of Georgia.

In the affirmance of the interlocutory injunction,
(Georgia Railway & Power Company vs. City of College Park and Town of Decatur, 152 Ga. 143.)

the Supreme Court granted leave to review the mandamus case and did review it. The Supreme Court only grants the right to review some other case between other parties, when the judgment sought to be reviewed is **not** res adjudicata.

Southwestern Ry. Co. vs. Wright, 68 Ga. 311, 312, (7).
Georgia Penitentiary vs. Nelms, 65 Ga. 501, 502.

Respectfully submitted,

L. Z. ROSSER,

J. PRINCE WEBSTER,

WALTER T. COLQUITT,

Attorneys for Plaintiffs in Error and Petitioners in Certiorari.

Atlanta, Ga.

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IN THE

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OCTOBER TERM, 1921

GEORGIA RAILWAY & POWER COMPANY, ET AL.
Petitioners

vs.

MAYOR AND COUNCIL OF CITY OF COLLEGE PARK,
Respondent

PETITION FOR CERTIORARI
BRIEF AND MOTION

LUTHER Z. ROSSER
J. PRINCE WEBSTER
WALTER T. COLQUITT
Attorneys for Petitioners

IN THE

Supreme Court of The United States

OCTOBER TERM, 1921

GEORGIA RAILWAY & POWER CO., GEORGIA RAILWAY & ELECTRIC CO., J. D. MALSBY, J. R. HARDIN, F. McDONALD, JR., C. M. BINDER, J. C. GORMAN, A. L. CURTIS, J. E. PHILLIPS, J. H. GLENN, P. L. PROVANO, H. L. GLOER, F. W. HADLEY, B. T. SIMPSON, J. L. MURPHY, D. N. BALDWIN, C. E. BENNETT, W. E. FLOWERS, H. L. WILLIS, T. F. JOHNSON, W. E. FIELD, R. L. WALKER, C. C. BARFIELD, M. W. HAWN, P. E. DAVIS and C. ROESSLER,

Petitioners,

Vs.

THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK,

Respondents.

TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES OF AMERICA:

The petition of Georgia Railway & Power Company, Georgia Railway & Electric Company, J. D.

Malsby, J. R. Hardin, F. McDonald, Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn, P. L. Provano, H. L. Gloer, F. W. Hadley, B. T. Simpson, J. L. Mrphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. L. Willis, T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfield, M. E. Hawn, David Hawn, P. E. Davis, and C. Roessler, respectflly shows:

1.

The Mayor and Council of the City of College Park (a municipal corporation of the State of Georgia) brought an equitable petition against Georgia Railway and Power Company, individually and as lessor of Georgia Railway & Electric Company, seeking to enjoin the street railway companies from increasing fares, as to the College Park line, of passengers boarding or alighting from cars within the corporate limits of the City of College Park, from five cents per passenger to seven cents per passenger, claiming that:

(a) That all lines of street railways had been placed under the jurisdiction of the Railroad Commission by the act of the Georgia legislature of 1907, with the exception stated in the following proviso: "Provided, however, that nothing herein shall be construed to impair any valid, subsisting contract now in existence between any municipality and any such company."

(b) That on the — day of April, 1918, the Railroad Commission of Georgia declared its lack of jurisdiction to fix fares upon all of the lines of the said street railway companies, including the City of

College Park, upon the grounds that the lines of said companies fell within the proviso of the act of 1907, supra.

(c) That the said railway companies, by mandamus proceedings in the Supreme Court of Georgia, reversed this ruling of the Railroad Commission, directing them to fix fares upon all of the lines of said companies except as to that part of the College Park line included within the corporate limits of the City of College Park and that part of the North Decatur line situated within the corporate limits of the Town of Decatur. (149 Ga. 1.) This exemption was based upon the ground that the City of College Park and the Town of Decatur had contracts falling within the proviso of the act of 1907, supra.

(d) That by reason of the allegations supra (a) to (c), inclusive, the City of College Park had a valid perpetual contract by which the said street railway companies were never to charge passengers alighting from or boarding cars in College Park more than five cents per passenger.

2.

Respondents further sought to enjoin the street railway companies from discontinuing the giving of transfers to passengers boarding cars in College Park from all other lines of railway within the City of Atlanta, claiming that it had always been the custom of the railway companies to give transfers under certain conditions to passengers on their other lines, and that the Railroad Commission of Georgia had (to-wit, April 19, 1919) ordered the railway companies to continue the issuing of transfers to

patrons of the College Park line within the limits of College Park, just as they were issued to patrons on other lines of said companies.

3.

The fact that the said railway companies had notified respondents that they would increase fares to seven cents on October 10, 1920, was given as the immediate need for the injunction.

4.

The railway companies showed cause and defended by answer and demurrer, substantially as follows:

(a) The railway companies furnished the railway system for the City of Atlanta and vicinity, 157 miles of their railway being in the City of Atlanta; their full mileage being 212 miles of single track.

(b) That the College Park line begins in the City of Atlanta at Broad and Alabama streets, and runs over various streets in the city, through West End and Oakland City (formerly municipalities, but now within the City of Atlanta) 4.576 miles to the city limits; thence over the public roads of Fulton County, to and through the Town of East Point; thence along the Fulton County road 2.474 miles; thence to the northern limits of College Park; a distance from the starting point of 7.309 miles; thence along the streets of College Park 1.173 miles, the total length of the line being 8.48 miles.

(c) That prior to the 2nd day of April, 1919, and prior to the rendition of the decision in 149 Ga. 1, the said street railway companies charged a uniform

fare of five cents per passenger, with transfers upon uniform conditions.

(d) Upon said last named date the Railroad Commission of Georgia, after a full hearing, increase the rate of fare to six cents per passenger, except as to the College Park line within the limits of College Park and the North Decatur line within the limits of Decatur. After this order of the Commission a six-cents fare was charged upon all the street railway lines except those stated.

(e) On September 22, 1920, the Georgia Railroad Commission, upon further hearing, fixed a seven-cents fare on all the lines of the railway companies except as to College Park and Decatur, as above stated. In rendering this seven-cents order, the Commission said:

> "The five-cent fare now in effect on the Main Decatur and College Park lines, contracted for under vastly different conditions than now exist, are not fairly compensatory, and, as to the patrons of the company on other routes, are discriminatory. This Commission is without authority to increase them. In the same order said commission increased both the quantity and quality of service to be rendered College park traffic."

(f) That the ordinance of November 6, 1905, if valid as a contract and binding upon the railway companies, provides for a five-cents fare only from the southern limits of the City of College Park to some central point in the City of Atlanta and from no other point in the City of College Park, and from

no point in the City of Atlanta or elsewhere to any point in College Park.

(g) That if the fare provision in the ordinance of November 6, 1905, be construed as an ordinance regulating and fixing fares, or be construed as a contract for fares, it is void in either instance, because of lack of authority in the City of College Park to make such contracts or pass such ordinances, and for lack of authority in the street railway companies to make such contracts.

(h) If the rate ordinance above referred to be construed as a contract, and as valid at its inception, it was terminated by the notice given by the street railway companies; and it is discriminatory in that it discriminates in favor of all passengers boarding or alighting from cars within the City of College Park; those so boarding or alighting being charged only five cents, and all the other passengers along the College Park line being charged seven cents; and further was illegal at its inception, not only for lack of statutory authority in the parties to make the contract but as being in violation of Sections 6389, 6464 and 6467, of the Code of 1914 of the State of Georgia.

(i) If said rate ordinance is construed to be a contract, it has been revoked by the State of Georgia, through the Railroad Commission of said State, by adding to the contract the duty of giving transfers and by increasing, through the orders of said Commission, the quality and quantity of service to be performed under said claimed contract.

(j) By the act of the legislature of Georgia of

1906 (Georgia Laws 1906, page 650) the corporate limits of the City of College Park were extended towards the City of Atlanta, so as to include part of the College Park line, built under a franchise granted by the County of Fulton, and which was therefore not included in the rate ordinance of November 6, 1905.

(k) Under the Constitution of the State of Georgia, the General Assembly may not authorize the construction of any street passenger railway within the corporate limits of any town or city without the consent of the municipal authorities. The College Park line was originally constructed under the consent, or franchise, of the City of Atlanta, the Town of West End, the Town of Oakland City, the County of Fulton, the Town of East Point, and the City of College Park. In none of these original franchises was there any provision for a five-cents fare.

(l) The cost of the service to patrons boarding or alighting from cars within the corporate limits of the City of College Park is 13.956 cents per passenger, and said service is not, and never will be, within the five cents now charged.

(m) On October 5, 1920, the street railway companies notified the Mayor and Council of the City of College Park that from and after the 20th day of October, 1920, the claimed five-cents fare provision of the ordinance of November 6, 1905, would be terminated.

(n) The rate provision of the ordinance of 1905 confiscates the property of the railway companies and is, therefore, unconstitutional and violates the

Fourteenth Amendment to the Constitution of the United States, in that it deprives the street railway companies of their property without due process of law, and denies to all the patrons of said railway companies, except the College Park patrons, including the intervenors herein, the equal protection of the laws, in that the College Park patrons pay a five-cents fare and all the other patrons pay seven cents.

The legislative act of the State of Georgia (Acts 1907, page 73, et seq.), amended by the Act of August 18, 1919 (Ga. Laws 1919, page 94), is unconstitutional and violative of the Fourteenth amendment to the Constitution of the United States, in that it denies to each of the petitioners the equal protection of the laws and fixes a discriminatory and illegal scheme of rates, in that said act places under the jurisdiction of the Railroad Commission of Georgia the authority to change rates fixed in all contracts except valid, subsisting contracts in existence on August 23, 1907, between any municipality and any street railway company having its principal office and operating lines of railroad in counties having a population of more than 75,000 and less than 125,000.

It further violates the Fourteenth Amendment to the Constitution of the United States by depriving the petitioning railways of their property without due process of law, in that it deprives the Railroad Commission of the power to change rates as just above stated, and confers upon said Commission the power to increase the quality and quantity of service rendered and the power to command the issuance of transfers by said railways.

(o) The act of 1907 (Acts 1907, page 73 et seq.) violates the Fourteenth Amendment to the Constitution of the United States in that under and by virtue of said act, power and authority are conferred upon the Railroad Commission of Georgia to fix a seven-cents rate of fare for less or similar service rendered to all other persons and patrons, and a five-cents rate of fare for College Park patrons for a greater and similar service.

(p) If the rate provision of the ordinance of 1905 is a contract between the City of College Park and the street railways companies, then the act of 1907 (page 73 et seq.), when construed as permitting the Railroad Commission of Georgia to add to the contract by adding transfers and increasing the quantity and quality of service, impairs the obligations of the contract between the parties, in violation of Article 1, Section 10, of the Constitution of the United States.

(q) If the rate provision of the ordinance of 1905 be held by the Court to be a contract, then the Court should further hold that the legislative act of 1907 (Acts 1907, page 73 et seq.) and the orders of the Commission making the five-cents fare provision operative from other points in College Park to points other than a central point in the City of Atlanta, and from any point without to any point within the City of College Park, then said act and orders impair the obligations of said contract, in violation of Article 1, Section 10, of the Constitution of the United States.

(r) If the fare provision of the ordinance of 1905

constitutes a contract, and if the act of 1906 increasing the limits of College Park has thereby added to the five-cents zone, then said act of 1906 violates Article 1, Section 10, of the Constitution of the United States: (1) In that it extends the five-cents fare provision of the contract to territory added to the City of College Park after the execution of the contract. (2) In that the County of Fulton granted a franchise to the railway companies, under and by virtue of which the railway tracks were laid in the public roads of Fulton County (now included in the corporate limits of the City of College Park) under which the fares to be charged to patrons were not limited.

5.

The street railway companies prayed and requested the power to abandon so much of their line as was located in the City of College Park because the operation of said line cost more than thirteen cents per passenger, and to be compelled to continue to operate said line confiscated their property, contrary to the Fourteenth Amendment to the Constitution of the United States.

6.

The individual petitioners were allowed to intervene as parties defendant. They adopted the answers and demurrers of the street railway companies, and prayed a cessation of the discrimination against themselves, and specifically raieed the constitutional question, contending that enforced compliance with the ordinance of November 6, 1905, violated the Fourteenth Amendment to the Constitution of

the United States as to them, in that it denied them and all oher persons, except those boarding and alighting from cars within the corporate limits of College Park, the equal protection of the laws as therein guaranteed, in that they and others like situated were charged a fare of seven cents, while the College Park patrons paid only five cents.

7.

A preliminary injunction was granted in the court below, taken up by a writ of error to the Supreme Court of the State of Georgia, and the judgment of the court granting the restraining order was sustained.

8.

Thereafter final trial was had and upon motion, the trial court struck the answers and cross-bills of petitioners on general demurrer and directed a verdict in favor of the respondents, entering thereupon a decree in their favor. The effect of such decree was to sustain as legal and binding, with which compliance must be had, all the orders of the Commission and the acts of the State attacked in the answers and cross-bills; it enforced compliance with the provisions of the ordinance of November 6, 1905, with the various acts of the State and with the orders of the Commission enlarging and extending such contract by requiring the issuance of transfers and increasing the quality and quantity of the service, and by enlarging and extending the territory to which the five-cents fare provision was to apply, and denied the right of petitioning street railway companies to give up all their franchise

rights in the City of College Park and to cease further operation of their line located in College Park.

9.

Petitioners submit the following reasons why the writ of certiorari should be allowed:

(a) The ordinance of November 6, 1905, is not a rate contract. It is neither in form nor substance a contract, but is an attempted ordinance, which the City of College Park had no right to pass, seeking to regulate rates. Neither the City of College Park nor the petitioning railway companies had the statutory power to make rate contracts, and had the statutory power been given them such statutes would be void, for under the Constitution of Georgia the legislature alone can make rates. The legislature itself cannot make an irrevocable grant of special privileges of immunities. "The exercise of the police power of the State shall never be abridged, nor so construed as to permit corporations to conduct their business in such a manner as to infringe the equal rights of individuals, or the general well being of the State."

Grant that the contract was valid at its inception, it was at most a contract at will and subject to be terminated upon reasonable notice.

When the Railroad Commission increased the fares on every other part of the street railway system to six cents, it became discriminatory, and hence illegal. It is not contended that the State could not have revoked it at any time. Without dispute, the

State did so modify it that the petitioning railways were released from the contract, by the Commission's ordering the issuance of transfers, by increasing and enlarging the quality and quantity of the service to be performed under the contract, and by extending the area covered by the contract.

It is true that the Supreme Court of Georgia held that this ordinance was not a rate ordinance but a rate contract, and a valid contract. When the Fourteenth Amendment to the Constitution of the United States is appealed to, it will be determined by this Court whether the confiscatory instrument is, in fact, a contract or a rate ordinance. If this question is to be determined exclusively by the State courts, then in a large number of instances the State will for itself pass upon the Fourteenth Amendment.

(b) The enforcement of the rate ordinance of November 6, 1905, discriminates against the individual intervenors and, as to them, violates the Fourteenth Amendment to the Constitution of the United States, in that it denies to them the equal protection of the laws. They live on the College Park line between the corporate limits of the City of Atlanta and the corporate limits of the City of College Park. All of them pay a seven-cents fare, many of them for very short distances. The College Park patrons pay five cents for the longest haul on the line.

(c) The legislative act of 1907 (Acts 1907, page 73 et seq.), as amended in 1919, as construed by the court, violates the Fourteenth Amendment to the Constitution of the United States as to all of the

petitioners, in that it denies to them the equal protection of the laws and fixes a discriminatory and illegal scheme of rates. That act places under the jurisdiction of the Railroad Commission of Georgia all street railways in said State and under its terms the Railroad Commission can disregard all rate contracts in the State except valid, subsisting contracts in existence on August 23, 1907, between any municipality and any street railway company having its principal office and operating lines of railroad in counties having a population of less than 75,000 and more than 125,000. This character of contract here excepted is beyond the reach and power of the Commission, no matter how unjust or unfair to the public utility; but as to all other contracts, it may disregard them and fix such rates as to it may seem just and fair.

Under its operation, College Park citizens ride for five cents, when the service costs more than thirteen cents. Other citizens on the same line enjoy a much less service, but are charged seven cents. An act which establishes a scheme of rates permitting such inequality between patrons cannot be justified by any fair system of classification.

As construed by the court, under this act, while the Commission may not change the contract as to the rate of fare, it is here so construed by the court as to permit the Commission to change the excepted municipal contract by adding to its terms a provision for transfers and by increasing the quality and quantity of service anticipated in the terms of the contract. So construed by the court, said act violates the Fourteenth Amendment to the Consti-

tution of the United States in that it takes the property of the railway companies without due process of law.

Said act, as to the individual petitioners, fixes an illegal and discriminatory scheme of rates, in violationof the Fourteenth Amendment to the Constitution of the United States, in that the court held that under that act the Railroad Commission had the power to fix a seven-cents rate of fare for petitioners and others similarly situated, while a five-cents fare for a greater service is permitted to the College Park patrons.

If the court correctly held that the rate ordinance of 1906 was a valid contract between the parties, then the legislative act of 1907 (Acts 1907, page 73 et seq.), as construed by the court, violates Article 1, Section 10, of the Constitution of the United States. That act permits the Railroad Commission to add to the contract by demanding the issuance of transfers and by increasing the quality and quantity of service as contemplated by said act; said addition and increase being an impairment of the obligations of the said rate contract.

Since the court held that the rate ordinance of 1905 was a valid and binding contract between the parties, then said act of 1907 (Acts 1907, page 73 et seq.), as construed by the Court, violated Article 1, Section 10, of the Constitution of the United States, in that said Act permitted the Railroad Commission of Georgia to enforce a five-cents fare not only from the southern limits of the City of College Park to some central point in the City of Atlanta, but from

all points within the City of College Park to all points without the City of College Park, and from all points without the City of College Park to all points within the City of College Park.

In the year 1906, after the passage of the ordinance of November 6, 1905, the legislature enlarged the area of College Park, extending it toward the City of Atlanta, and taking in a section of the street railway line not theretofore included in the limits of College Park. The court construed that enlarging act so as to bring the new territory under the provisions of the rate ordinance of 1905. If such rate ordinance was, in fact, a rate contract, the construction of the enlarging act so as to add new territory to the provisions of that contract impaired the obligations of the contract, in violation of Article 1, Section 10, of the Constitution of the United States.

(d) The petitioning railway companies built their tracks upon the public roads of Fulton County, under a franchise contract with that County wherein there was no five-cents fare provision. When the Court so construed the enlarging act of 1906 as to apply the rate ordinance to the added territory, it so construed it as to impair the obligations of the contract between the petitioning railway companies and the County of Fulton, in violation of Article 1, Section 10, of the Constitution of the United States.

In the cross-petition, the petitioning street railway companies, setting up that the service to each College Park patron, under the rate ordinance of 1905, cost the companies more than thirteen cents, prayed that they be allowed to relinquish their fran-

chise in College Park and take up their tracks in its streets. The court, with the dismissal of the cross-bill, denied this right, holding that under the charter and the rate ordinance, they were bound to continue the College Park service, even if the result was a confiscation of their property. It is contended that, as construed by the court, the rate ordinance of 1905 is in violation of the Fourteenth Amendment to the Constitution of the United States. Under that provision of the Constitution, a corporation cannot be forced to dedicate its property to the public service to the destruction of its property.

10.

Petitioners further submit that this case is of great important to the petitioning railway companies and the individual petitioners, involving a question of confiscation of the property of the public utilities and gross discrimination against the individual petitioners.

WHEREFORE, your petitioners pray that a writ of certiorari may be issued out of and under the seal of this Court, directed to the Supreme Court of the State of Gergia, to the end that the judgment and decree of the Supreme Court of Georgia may be reviewed and reversed by this Honorable Court.

LUTHER Z. ROSSER,
J. PRINCE WEBSTER,
WALTER T. COLQUITT,
Attorneys for Petitioners.

GEORGIA,—FULTON COUNTY.

Before me personally appeared Walter T. Colquitt, who, being duly sworn, deposes and says that he is counsel for the petitioners, Georgia Railway & Power Company, Georgia Railway & Electric Company, J. D. Malsby, J. R. Hardin, F. McDonald, Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn, P. L. Provano, H. L. Gloer, F. W. Hadley, B. T. Simpson, J. L. Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. L. Willis, T. F. Johnson, W. E. Field, R. L. Walker, C. C. Barfield, M. E. Hawn, David Hawn, P. E. Davis and C. Roessler; that he knows of the proceedings had, and that the facts stated in the foregoing petition are true and correct, to the best of his knowledge and belief.

WALTER T. COLQUITT.

Sworn to and subscribed before
me this 22nd day of June, 1922.

INEZ BOINEST.

Notary Public, Fulton County, Ga.

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1921.

GEORGIA RAILWAY & POWER CO., GEORGIA RAILWAY & J. R. HARDIN, F. McDONALD, JR., C. M. BINDER, J. C. GORMAN, A. L. CURTIS, J. E. PHILLIPS, J. H. GLENN, P. L. PROVANO, H. L. GLOER, F. W. HADLEY, B. T. SIMPSON, J. L. MURPHY, D. N. BALDWIN, C. E. BENNETT, W. E. FLOWERS, H. L. WILLIS, T. F. JOHNSON, W. E. FIELD, R. L. WALKER, C. C. BARFIELD, M. W. HAWN, P. E. DAVIS and C. ROESSLER, Petitioners.	Petition for Certiorari.
Vs.	
THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK, Respondents.	

TO THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK, AND GEORGE P. WHITMAN, THEIR ATTORNEY OF RECORD:

This is to notify you, and each of you, that the above named Georgia Railway & Power Company, Georgia Railway & Electric Company, J. D. Malsby, J. R. Hardin, F. McDonald, Jr., C. M. Binder, J. C. Gorman, A. L. Curtis, J. E. Phillips, J. H. Glenn, P.

L. Provano, H. L. Gloer, F. W. Hadley, B. T. Simp son, J. J. Murphy, D. N. Baldwin, C. E. Bennett, W. E. Flowers, H. L. Willis, T. P. Jonson, W. E. Field, R. L. Walker,, C. C. Barfield, M. E. Hawn, David Hawn, P. E. Davis and C. Roessler, petitioners for certiorari, will on Monday, the 17th day of July, 1922, upon their verified petition and copy of the entire record in this case, at the opening of Court on that day, or as soon thereafter as counsel can be heard, submit a motion (a copy of which and of the petition for writ of ceritorari and brief in support thereof are herewith delivered to you) to the Supreme Court of the United States in its courtroom at the Capitol in the City of Washington.

LUTHER Z. ROSSER,

J. PRINCE WEBSTER,

WALTER T. COLQUITT,

Attorneys for Petitioners.

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1921.

GEORGIA RAILWAY & POWER CO., GEORGIA RAILWAY & J. R. HARDIN, F. McDONALD, JR., C. M. BINDER, J. C. GORMAN, A. L. CURTIS, J. E. PHILLIPS, J. H. GLENN, P. L. PROVANO, H. L. GLOER, F. W. HADLEY, B. T. SIMPSON, J. L. MURPHY, D. N. BALDWIN, C. E. BENNETT, W. E. FLOWERS, H. L. WILLIS, T. F. JOHNSON, W. E. FIELD, R. L. WALKER, C. C. BARFIELD, M. W. HAWN, P. E. DAVIS and C. ROESSLER,

Petitioners,

Vs.

THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK,

Respondents.

BRIEF IN SUPPORT OF PETITION FOR CERTORARI.

A full statement of the case appears in the petition for certiorari.

This case is already pending in this Court on writ of error.

Under a number of decisions of this Court, had

the case arisen prior to the Act of Congress of September 16, 1916, amending Judicial Code 230 (changing the procedure in bringing certain questions to this Court from writ of error to certiorari), a writ of error would lie. The change in procedure made by this Act and subsequent decisions of this Court, leave counsel for petitioners in doubt as to which remedy should be followed; and they, therefore, respectfully request that the certiorari be sanctioned as prayed, so that the questions raised may be considered and determined by this Court.

FEDERAL QUESTIONS RAISED WHETHER OR NOT RATE PROVISON IS HELD TO BE A CONTRACT.

Whether the rate provisions of the ordinance of November 6, 1905, is held to be a binding contract, or merely a rate ordinance federal questions for judicial determination by this Court—are raised. If it is held to be a contract the constitutional question is raised that subsequent stautes of the State of Georgia and orders of the Railroad Commission of Georgia unconstitutionally impair its obligations in violation of Article 1, Section 10, of the Constitution of the United States.

If it is held to be a rate ordinance then constitutional questions are raised, that it violates the Fourteenth Amendment of the Constitution of the United States; for the 5 cents rate provision therein contained is admittedly confiscatory and discrimina-

tory; and has been expressly so held and declared by the Railroad Commission of the State of Georgia.

This is a typical case for the exercise of the jurisdiction of this Court under a long line of decisions.

When the contract clause of the United States Constitution is invoked, this Court determines for itself (1) Is there a contract? (2) If so, what obligation arose from it. (3) Has that obligation been impaired by subsequent legislation?

> Detroit United Railway Co. vs. Michigan, 242 U. S., 238, 249.
>
> Milwaukee Electric Ry. Co. vs. Wisconsin, 252 U. S., 100, 103.
>
> Stearns vs. State of Minnesota, 179 U. S., 223, 232.

This Court determines the question of whether or not there is a contract, for itself, and in deciding it may even reverse the State court's construction of the State Constitution.

> University vs. People, 99 U. S., 309, 323.

The reason for this rule, as stated by this Court, is that an erroneous decision by the State Court might defeat the federal jurisdiction and absolutely deprive a party of a constitutional right guaranteed to him by the Constitution of the United States.

Similarly, when the Fourteenth Amendment of the Constitution of the United States is invoked against

an ordinance, confessedly discriminatory and confiscatory and the claim is made that it is binding as a contract, this Court has the jurisdiction to determine for itself whether there is a contract, its meaning, validity and extent, and if held to be a mere ordinance or legislative act, whether its discriminatory or confiscatory character violates the Fourteenth Amendment of the Constitution of the United States. Otherwise, a State court (similarly as when the impairment of a contract clause of the United States Constitution is invoked) by holding an ordinance or statute to be a contract might absolutely deprive a party of the constitutional guarantee against the confiscation of his property, and the equal protection of the law.

San Antonio vs. San Antonio Pub. Service Co., 255 U. S., 547.

Southern Iowa Elec. Co. vs. Chariton, 255 U. S., 539.

As the impairment of the obligation of the contract clause of the United States (Article 1, Section 10) is invoked and questions as to the violation of the Fourteenth Amendment of the Constitution of the United States are raised, the federal question is made, as to whether or not the rate provision of the ordinance of November 6, 1905, is or is not a contract.

The determination of this question is, in and of itself, a federal question.

Headley's Administrator vs. San Francisco, 124 U. S., 639, 645.

CONTENTION THAT RATE PROVISION IS NOT A CONTRACT.

To show that under the decisions of this Court a substantial federal question is raised; that the rate ordinance of November 6, 1905, is not a contract; we briefly call attention to some of the decisions of this Court sustaining the contention of petitioners that no binding rate contract exists.

As the parties to the claimed rate contract have no explicit, express or implied constitutional or legislative authority to make binding rate contracts, the ordinance is not a contract.

Home Tel. & Tel. Co. vs. Los Angeles, 211 U. S., 265.

Milwaukee Elec. Ry. Co. vs. Wisconsin, 238 U. S., 174.

City of Englewood vs. Denver & A. P. Ry. Co., 248 U. S., 294.

San Antonio Pub. Service Co., 255 U. S., 547.

Southern Iowa Elec. Co. vs. Chariton, 255 U. S., 539.

Georgia Constitutional provision (Code Section 6389) forbidding making irrevocable grants of special privileges or immunities, prevents the ordinance from being a contract.

San Antonio vs. San Antonio Pub. Service Co., 255 U. S., 547.

Similarly, Georgia Constitutional provision (Code Section 6464)—"the exercise of the police power of the State shall never be abridged, nor so construed as to permit corporations to conduct their business in such a manner as to infringe the equal rights of individuals, or the general well-being of the State," prevents the ordinance from being a rate contract.

O'Keefe vs. City of New Orleans, 273 Fed. Rep., 560.

State action subsequent to November 6, 1905, made the rate provision illegal and unenforceable. Action by the State of Georgia through the Railroad Commission of the State of Georgia subsequent to November 6, 1905, renders the rate provisions discriminatory and violative of the constitutional provision of the State of Georgia (Code Section 6463) prohibiting unjust discrimination, and Code Section 6467 and 6469 makng discrimination (directly or indirectly) exercised by a Railroad Company unconstitutional and void.

Rate provision is now unenforceable under the general principles of law and under the Fourteenth Amendment of the United States Constitution; in that it, and the rates established by the State of Georgia over other portions of the same line, have the effect of establishing two different rates over the same line, charging College Park patrons a lesser fare for the greater or similar service under

the rate provision of November 6, 1905, than charged other patrons for the same or less service, under the State fixed rates.

As held by this Court in 194 U. S., 517, the enforcement of two such different rates over the same line lead to consequences dangerous to the public interest, peace and tranquillity, the extent of which it is difficult to perceive.

Discriminatory rate contracts always and everywhere void and unenforceable.

> Portland Railway & Light Co. vs. Oregon, 229 U. S., 397.

> Portland Railway & Light Co. vs. Oregon, 229 U. S., 414.

Such being the evil effect of the further performance of the rate provision of November 6, 1905, under the decisions of this Court it has either been sufficiently performed as a contract, or it has been terminated by the Railway Company by notice.

> Texas., Etc., Ry. Co. vs. Marshall, 136 U. S., 393.

It is held by the State court that the State, at any time, can terminate or confer power upon the Railroad Commission to change the rate provision in question. As such provision is not binding on the State it is unilateral and being confessedly confiscatory and discriminatory cannot be enforced against the street railway companies, and the individual intervenors.

Central Power Co. vs. City of Kearney, 274 Fed. Rep., 253 (2) and cases cited.

San Antonio vs. San Antonio Pub. Service Co., 255 U. S., 547, 558.

It has been terminated as a contract by notice, as the rate provision contained no specific time it was to continue.

Jones vs. Newport News, 65 Fed., 736.

City of Utica vs. Cons. Water Co., 179 Fed., 875.

Western Union Tel. Co. vs. Pennsylvania Co., 125 Sed., 67.

Texas & P. Ry. Co. vs. Scott, 77 Fed. Rep., 735.

If the Court holds the rate provision is not a binding valid rate contract; the federal question is made that as a rate ordinance it violates the Fourteenth Amendment of the Constitution of the United States.

TREATING RATE ORDINANCE OF NOVEMBER 6, 1905, AS A CONTRACT.

If the rate ordinance of November 6, 1905, is held to be a contract the jurisdiction of this Court is invoked to determine what obligations arose from it and whether these obligations have been impaired.

The amount of the impairment is immaterial, if there is any, it is sufficient to bring into activity the judicial power of this Court.

Farrington vs. Terry, 95 U. S., 693.

The Acts of the Legislature of Georgia (Ga. Laws

1906, page 650) extended the corporate limits of College Park towards the City of Atlanta, so as to include part of the College Park line built under a franchise granted by Fulton County. But for this annexation Act the 5 cents rate of fare of the contract of November 6, 1905, would not apply to such added portion of the line, but there would be an undisputed right resting under the franchise contract with Fulton County to charge 7 cents over this portion of the line. It is only because of this subsequent legislative act that this is prevented. That is the eyect given to this act. The judgment of the court below requiring a 5 cents rate of fare over this portion of the line rests on this act; without the Act such judgment would not and could not have been rendered. It will thus be seen that this act and the effect given it impairs the contract right held by the Street Railway Companies with Fulton County and also adds to the contract of November 6, 1905, in violation of Article 1, Section 10, of the Constitution of the United States.

Detroit United Ry. Co. vs. Michigan, 242 U. S., 238.

United States vs. eMmphis, 97 U. S., 284.

That the decision of the State court may not mention the Act in question is immaterial as the decision itself gave effect to the annexation Act.

Houston vs. Texas C. Rd. Co., vs. Texas, 177 U. S., 66, 67.

Similarly, the contract of November 6, 1905, does not require the issuing of transfers, but the order of

the Railroad Commission of April 19, 1919, requires the issuing of universal transfers for the 5 cents fare, although under the Commission's orders as to transfers all other patrons (other than the College Park patrons) pay 7 cents before they can receive a transfer. The Commission's order thus unconstitutionally impairs the obligation of the contract by adding to its burden.

> Detroit United Ry. Co. vs. Michigan, 248 U. S., 429, 436, 437.

Similarly, the Railroad Commission of Georgia by its orders extends the 5 cents fare provision to other points and in other directions than called for by the contract; also, by its orders, the quality and quantity of service is increased beyond that contemplated and required by the contract.

These different Commission's orders are attacked as violative of Article 1, Section 10, of the Constitution of the United States, as they are the same as legislative acts.

> Arkadelphia iMlling Co. vs. St. L. S. S. W. Ry. Co., 249 U. S., 134.

OTHER FED9RAL QUESTIONS RAISED.

The Acts of 1907, page 73 et seq., are construed by the State Court as conferring jurisdiction upon the Commission to issue the orders attacked. It is only because of this act, that the State Court holds the Commission had power and authority to pass the orders in question, giving such construction and effect to this Act the act is attacked as impairing the obligations of the contract in violation of Article 1,

Section 10, of the Constitution of the United States, a federal question for determination by this Court.

Detroit United Railway vs. Michigan, 242 U. S., 238.

The federal question is further raised that the Act of 1997, page 73 et seq., as construed by the State court, violates the Fourteenth Amendment of the Constitution of the United States, in that said Act denies the Railroad Commission of the State of Georgia power to change the 5 cents rate of fare in the contract, although it confers upon the Commission the power to increase the quality and quantity of service, and to require the issuing of transfers though not required by the contract; and gives the Commission jurisdiction to make the rate of fare provided for in the contract, operative from other points and in different directions from that specified in the rate contract. The act thus construed confiscates the property of the Street Railway Company.

Mississippi Railroad Commission vs. Mobile R. Co., 244 U. S., 388.

Washington & C. Ry. Co. vs. Macgruder, 198 Fed., 218 (3, 4).

Similarly each of the orders of the Commission complained of unconstitutional confiscates the property of the street railway companies. (244 U. S., 388; 198 Fed. Rep., 218 (3, 4).

If the Railroad Commission increases the rate of fare of other patrons because of their confiscatory orders as to College Park traffic, the individual intervenors are denied the equal protection of the law

and their property is confiscated in violation of the Fourteenth Amendment of the United States Constitution. The individual intervenors contend that the Act of 1907, page 73 et seq., and the orders of the eGorgia Railroad Commission unconstitutionally discriminates against them.

The federal question is raised that the Act of 1907, page 73 et seq., amended by the Act of August 18, 1919 (Georgia laws 1919, page 94), as construed by the State court is class legislation in violation of the Fourteenth Amendment of the Constitution of the United States.

It is unquestioned that the Legislature of the State of Georgia can place all rates and rate contracts under the jurisdiction of the Railroad Commission of the State of Georgia. Legislative discrimination and class legislation is produced by the Act in question by placing some contracts and withholding others (without distinction as to classification) under the jurisdiction of the Railroad Commission of the State of Georgia.

Traux vs. Corrigan, Co-Op Advance Sheets, January 16, 1922, page 132 (see pages 139-142).

Advance Sheets Supreme Court, January 16, 1922, page 124.

Lake Shore and Michigan So. Ry. Co. vs. Smith, 173 U. S., 684.

Chicago, R. I. & P. Ry. Co. vs. Ketchum, 212 Fed., 896.

L. & N. R. R. Co. vs. R. R. Com. of Tenn., 19 Fed., 693, 695.

Cotting vs. Goddard, 183 U. S., 79.

Union Sewer Pipe Co. vs. Connelly, 99 Fed., 354, affirmed in 184 U. S., 548.

Western Ry. of Ala. vs. Rd. Com. of Ala., 197 Fed. Rep., 954 (5, 6).

Gulf, Colorado & Santa Fe. Ry. Co. vs. Ellis, 165 U. S., 150, 165.

On the other hand if the rate provision of November 6, 1905, could be held to be a separate and distinct classification of rates and service; the federal question is raised that petitioners are deprived of their property in violation of the Fourteenth Amendment of the Constitution of the United States, for that such effect is given to the contract as to compel the street railway company perpetually to carry the College Park traffic at a confiscatory rate, though the contract had no specific time of duration and the electric company seeks to rescind and give up all its

rights under and by virtue of the contract and remove its lines from College Park.

Vandalia R. R. Co. vs. Schnull, 255 U. S., 131.

Brooks-Scanlon Co. vs. R. R. Com. of La., 251 U. S., 291, 399.

Detroit V. Ry. vs. People of State of Mich., 238 U. S., 340, 346.

See alos

Jones vs. Newport News & M. V. Co., 65 Fed. Rep., 736, 741.

LUTHER Z. ROSSER,
J. PRINCE WEBSTER,
WALTER T. COLQUITT,
Attorneys for Petitioners.

The foregoing notice is hereby accepted and delivery of a copy thereof and petition for certiorari and brief in support of petition, are hereby acknowledged. This June 26th, 1922.

GEORGE P. WHITMAN,
Attorney for Mayor and Council
for City of College Park.

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1921.

GEORGIA RAILWAY & POWER CO., GEORGIA RAILWAY & ELECTRIC CO., J. D. MALSBY, J. R. HARDIN, F. McDONALD, JR., C. M. BINDER, J. C. GORMAN, A. L. CURTIS, J. E. PHILLIPS, J. H. GLENN, P. L. PROVANO, H. L. GLOER, F. W. HADLEY, B. T. SIMPSON, J. L. MURPHY, D. N. BALDWIN, C. E. BENNETT, W. E. FLOWERS, H. L. WILLIS, T. F. JOHNSON, W. E. FIELD, R. L. WALKER, C. C. BARFIELD, M. W. HAWN, P. E. DAVIS and C. ROESSLER,
Petitioners,

Vs.

THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK,
Respondents.

Come now the above named petitioners, by their Counsel, and move this Honorable Court that it shall, by certiorari or other proper process, directed to the Supreme Court of the State of Georgia, require said Court to certify to this Court for its review and determination, a certain cause in said Supreme Court of Georgia lately pending, wherein the above named petitioners, were the plaintiffs in error, and and the above named respondents, were the defendants in error, and to that end they now tender herewith their petition and brief, with a certified copy

of the entire record in said Supreme Court of Georgia.

LUTHER Z. ROSSER,
J. PRINCE WEBSTER,
WALTER T. COLQUITT,
Attorneys for Petitioners.

GEORGIA RAILWAY & POWER COMPANY ET AL. *v.* MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK.

ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

No. 464. Argued April 24, 25, 1923.—Decided June 4, 1923.

1. A state statute extending the limits of a city and construed as having the effect of rendering applicable to the added territory maximum street railway rates fixed by an earlier contract between the city and the street railway company, impairs the obligation of the contract by adding to its burdens. P. 442. *Georgia Ry. & Power Co.* v. *Decatur, ante,* 432.
2. A contract of a street railway company with a city to carry passengers for a fare not greater than a stated maximum does not oblige it to issue free transfers. *Id.*
3. A contract of a street railway company with a city fixing a maximum fare for passage from that city to another city, *construed,* in accordance with the practice of the parties, as applying to passage between the cities in either direction. *Id.*

153 Ga. 329, reversed; certiorari denied.

ERROR to a decree of the Supreme Court of Georgia affirming a decree for the City of College Park in its suit to enforce compliance with a contract fixing street railway fares.

Mr. Walter T. Colquitt, with whom *Mr. L. Z. Rosser* and *Mr. J. Prince Webster* were on the briefs, for plaintiffs in error.

Mr. Geo. P. Whitman for defendants in error.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

The facts in this case and the contentions to be considered, with some exceptions presently to be stated, are essentially the same as those involved in *Georgia Ry. & Power Co.* v. *Decatur,* No. 463, just decided, *ante,* 432. From their inception in the state courts the two cases

have been considered together and in each of the three decisions referred to in the *Decatur Case* the State Supreme Court has disposed of them in a single opinion.

The contract here involved was made in 1905. It granted to the Electric Company the right to convert its single track within the limits of the municipality into a double track line of electric railway and provided: "That no greater fare than that of five cents for each passenger be charged for passage from the southern limits of said city of College Park to some central point in the City of Atlanta." The contract, however, unlike the Decatur one, contains no provision on the subject of transfers. Subsequently, by an act of the legislature, the limits of College Park were extended so as to take in a portion of the College Park line theretofore outside the municipality. Upon the authority of the *Decatur Case*, we hold that the application of the five-cent fare to the annexed territory impairs the obligation of the contract. In addition to that, the order of the commission requiring the issuance of free transfers to College Park patrons, was erroneous.

The state courts, in effect, construed the contract as obliging defendant to carry passengers in both directions between College Park and Atlanta at the stipulated rate, and with this construction we agree. It cannot be supposed to have been within the intention of the contracting parties that one rate of fare should be charged for passage in one direction and a different rate in the opposite direction, for the same distance, over the same line, under the same conditions and entailing the same service. Such a construction of the clause would subvert the plain purpose of the ordinance, which was to fix a five-cent fare between the two cities. We construe the phrase "from . . . College Park to . . . Atlanta" as though it read "between College Park and Atlanta." See *State* v. *Stone*, 20 R. I. 269. This construction, moreover,

agrees with the practice of the appellant, extending over many years in charging the same fare in each direction.

The decree of the State Supreme Court is reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed.

Writ of certiorari denied.